IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 3 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT-TAX

Versus

ARVINDKUMAR CHANDULAL

Appearance:

1. GIFT TAX REFERENCE No. 3 of 1994
MR TANVISH BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

When this reference reached hearing today, Mr Tanvish Bhatt, learned standing counsel for the revenue

made a specific request that since this reference is covered by a reported decision of this Court and the matter is pending since 1994, the reference may be taken up for hearing by this Bench notwithstanding the fact that one of us (Hon'ble Mr Justice K.A. Puj) had appeared as counsel for the assessee at the hearing before the Tribunal.

In view of the above request, we have taken up the reference for hearing today since the reference is pending since 1994 and the controversy is concluded by a reported decision.

2. In this reference at the instance of the revenue, the following question is referred for our opinion in respect of the assessment year 1980-81 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that there was no gift by the assessee in favour of the two partners of the firm whose shares had increased after the retirement of the assessee ?"

3. We have heard Mr Tanvish Bhatt, learned standing counsel for the applicant-revenue. Though served, none appears for the respondent-assessee.

4. The assessee retired from the partnership and the position regarding the shares of various partners before and after his retirement was as follows :-

Sr. No.	Partners	Before retirement	After retirement
1.	Gulabben Dalichand	24%	30%
2.	Jayantilal Dalichand	14%	38%
3.	Chimanlal Dayabhai	16%	16%
4.	Mahendrakumar Ramanlal	16%	16%
5.	Arvindkumar Chandulal	30%	--
	Total	100%	100%

In response to the notice issued by the Gift-tax Officer, the assessee file a Nil return stating that this

was a case of only reconstitution of the firm and that since the retiring partner did not have right to share in the future profit, there was no question of his giving up such a right. The Gift-tax Officer, however, computed the value of the taxable gift at Rs. 93,480/- after granting the basic exemption of Rs.5,000/-. The Deputy Commissioner of Income-tax (Appeals) rejected the appeal of the assessee relying on the decision of the Supreme Court in Chhotalal Mohanlal, 166 ITR 124 and held that there was a relinquishment by the retiring partner in favour of two of the remaining partners.

5. In his appeal before the Tribunal, the assessee pointed out from the new partnership deed that the partners whose shares had increased had also agreed to increase their share in the losses and that the two partners whose shares had increased had also contributed fresh capital. The Tribunal, therefore, accepted the assessee's contention that there was consideration and, therefore, there was no gift. The Tribunal distinguished the decision of the Supreme Court in Chhotalal Mohanlal's case (Supra) since that was a case of minors being admitted to the benefits of the partnership and hence, there could not be any question of their sharing losses. Hence, this reference at the instance of the revenue.

6. At the hearing today, our attention is invited to the decision of the Apex Court in Commissioner of Gift-tax vs. T.M. Louiz, (2000) 245 ITR 831 and also the decision dated 25.9.2001 of this Court in Gift-tax Reference No. 2 of 1987 as also the decision of the Apex Court in Commissioner of Gift-tax vs. D.C. Shah & Ors., (2001) 249 ITR 518.

7. Having heard the learned standing counsel for the revenue and having considered the facts as found by the Tribunal, we are of the view that the case at hand is squarely covered by the decision of the Supreme Court in Commissioner of Gift-tax vs. T.M. Louiz, (2000) 245 ITR 831 as explained by this Court's decision dated 25.9.2001 in Gift-tax Reference No. 2 of 1987. In T.M Louiz's case (Supra), the Apex Court has held as under :-

> "When a partner retires from the partnership, the partnership continues. The assets and the goodwill of the firm continue to remain the assets and the goodwill of the firm. All that the retiring partner gets is the value of his share in the partnership assets less its liabilities. It cannot, in such circumstances, be held, assuming that the retiring partner

> received less than what was his due, that the difference was something that he had transferred to the continuing partners within the meaning of "transfer of property" for the purposes of the Gift-tax Act or that there was a gift liable to gift tax."

(emphasis supplied)

Again in Commissioner of Gift-tax vs. D.C. Shah (Supra), the Apex Court has held that when one of the partners in a firm retires or his share is decreased and the share of another/other partner/s is correspondingly increased, it does not necessarily lead to the inference that the former had gifted the difference to the latter. The profit sharing ratio in a firm can vary for a number of reasons, among them the ability of the partners to devote time to the business of the firm. The gift of a part of a partner's share to another has to be established by relevant evidence and the onus of doing so is on the revenue.

8. In the facts of the present case, the two partners whose share was increased had not only agreed to share their losses but had also brought fresh capital when the assessee retired from the partnership firm. In the background of these facts, the aforesaid decision of the Apex Court in D.C. Shah's case is clearly applicable and, therefore, the Tribunal was justified in taking the view that there was no gift made by the assessee in favour of two of the continuing partners.

9. In view of the above discussion, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-